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FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON June 17, 1997

#94-51

IN THE MATTER OF THE	:	STATE OF NEW JERSEY
SUSPENSION OR REVOCATION OF	:	STATE BOARD OF PSYCHOLOGICAL
THE LICENSE OF	:	EXAMINERS
	:	DEPARTMENT OF LAW & PUBLIC SAFETY
	:	DOCKET NO.
LESTER H. BARBANELL, Ed.D.	:	
LICENSE NO. 1348	:	<u>CIVIL ACTION</u>
	:	
TO PRACTICE PSYCHOLOGY IN	:	
THE STATE OF NEW JERSEY	:	<u>ANSWER TO COMPLAINT</u>
	:	

Defendant, Lester H. Barbanell, Ed.D., by way of Answer to the Complaint of the State of New Jersey, State Board of Psychological Examiners, says:

GENERAL ALLEGATIONS

1. Paragraphs 1 and 2 of the General Allegations call for a legal conclusion to which no response is required.
2. Respondent admits the allegations of Paragraph 3 of the General Allegations.
3. Respondent admits that during the period from approximately the summer of 1991 through the end of August 1992, plaintiff practiced psychology on certain dates and times at 5311 Boulevard East, West New York, New Jersey and at his office located at One Horizon Road, Suite 1417, Fort Lee, New Jersey and denies the

remainder of the allegations of Paragraph 4 of the General Allegations.

4. Respondent denies the allegations of Paragraph 5 of the General Allegations.

COUNT ONE

1. Respondent admits that M.H. was a client of Respondent from on or about December 17, 1991 until October 13, 1992. Respondent admits that M.H. was treated by Respondent for depression during that time period, and denies the remainder of the allegations of Paragraph 1 of Count One.

2. Respondent is without information sufficient to form an answer as to the truth of the allegations of Paragraph 2, except that Respondent admits that M.H. discontinued taking anti-depressant medication previously prescribed due to the treatment provided by Respondent to M.H., and progress made by M.H. in response to that treatment.

3. The allegations of Paragraph 3 are unclear and are not allegations of fact, such that no answer is required or can be made.

4. Respondent admits that M.H. during a therapy session stated that her sister said that she should tell Respondent that M.H. was in love with Respondent, and denies the remainder of the allegations of Paragraph 4 of Count One.

5. The allegations of Paragraph 5 of Count One are unclear and are not allegations of fact, such that no answer is required or can be made, except that if the allegations assert that Respondent had

lunch with M.H. within several weeks of August 1992, such allegations are denied.

6. Respondent denies the allegations of Paragraphs 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

7. Respondent admits that M.H. attended a Matisse exhibit with Respondent, and denies the remainder of the allegations of Paragraph 11 of the Complaint.

WHEREFORE, Respondent demands judgment in favor of Respondent and against the Complainant, Attorney General of New Jersey dismissing the entire Complaint against Respondent and awarding costs of suit to Respondent, including reasonable attorney's fees and such other and further relief as the Board shall deem just and appropriate.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint is barred for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrines of waiver, estoppel and laches.

THIRD AFFIRMATIVE DEFENSE

The Complaint is barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

There was no violation of N.J.A.C. 13:42-4.1(a); 1. xvi(1); xvii(1) and xvii(4) and/or grounds of misconduct under N.J.S.A. 45:1-

21(e) as M.H. was not a client of Respondent at the time the Respondent and M.H. engaged in a consensual social relationship.

FIFTH AFFIRMATIVE DEFENSE

The State's claims of violation under N.J.A.C. 13:42-4.1(a) xxii(3) are barred as Respondent's conduct did not violate Federal or State statutory or regulatory law, nor demonstrated any act of incompetence or other grounds for revocation or suspension of his license to practice psychology in the State of New Jersey pursuant to N.J.S.A. 45:1-21(d).

SIXTH AFFIRMATIVE DEFENSE

The State's institution of this action is an abuse of N.J.S.A. 34:19-1 et. seq. and is frivolous; also, the action has been brought arbitrarily, vexatiously and not in good faith and to cause harm to Respondent by virtue of the false and defamatory allegations made in the Complaint, thus entitling the Respondent to an award of reasonable expenses including counsel fees incurred in connection with this action pursuant to N.J.S.A. 14A:12-7(9)(10).

SEVENTH AFFIRMATIVE DEFENSE

The State's claims are barred as they are based on information and belief and not fact.

EIGHTH AFFIRMATIVE DEFENSE

The State's claims are barred as Respondent was denied due process of law in violation of U.S.C.A. Const. Amend. 14 and 5 and N.J.S.A. Const. Art. 14.

NINTH AFFIRMATIVE DEFENSE

The State's claims are barred as they constitute an ex post facto law in violation of U.S.C.A. Const. and N.J.S.A. Const. Art. 4, §7, ¶3.

TENTH AFFIRMATIVE DEFENSE

The State's claims are barred as they constitute a taking of property without due process, and a taking of property without just compensation, in violation of U.S.C.A. Const. and N.J.S.A. Const. Art. 1, ¶1.

ELEVENTH AFFIRMATIVE DEFENSE

The State's claims are barred as the Board and/or Attorney General's action is arbitrary and capricious, and based upon an incorrect and over-broad application of law.

TWELFTH AFFIRMATIVE DEFENSE

There was no violation of N.J.A.C. 13:42-4.1(a); 1. xvi(1); xvii(1), xxii (3) and xvii(4) and/or grounds of misconduct under N.J.S.A. 45:1-21(e), and/or grounds of repeated acts of incompetence or other grounds for revocation or suspension of his license to practice psychology in the State of New Jersey pursuant to N.J.S.A. 45:1-21 (d).

WHEREFORE, Respondent demands judgment in favor of Respondent and against the Board of Psychological Examiners dismissing the entire Complaint against Respondent and awarding costs of suit to Respondent, including reasonable attorney's fees and such other and further relief as the Board shall deem just and appropriate.

SOKOL, BEHOT & FIORENZO
Attorneys for Respondent
Lester H. Barbanell, Ed.D.

BY: 

SUSAN I. WEGNER

Dated: June 16, 1997